

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	CC Docket No. 99-200
Numbering Resource Optimization)	
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**COMMENTS OF AT&T WIRELESS SERVICES, INC.
ON THE PETITION OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION
FOR WAIVER OF THE CONTAMINATION THRESHOLD**

Pursuant to Public Notice DA 02-2822,¹ AT&T Wireless Services, Inc. (“AWS”) submits these comments on the Petition of the California Public Utilities Commission (“CPUC”) seeking to waive the Commission’s contamination threshold rule from 10% and increase it to 25%. AWS opposes with limited exception the CPUC petition for waiver of the contamination threshold. Specifically, AWS recommends that this waiver be granted only for the 310 and 909 numbering plan areas (“NPAs”), provided that the Commission require the CPUC immediately to implement traditional area code relief (*e.g.*, a geographic split, or all services overlay, etc) in those NPAs.

I. DISCUSSION

The CPUC seeks waiver of the Commission’s rule that carriers donate to the thousands-block numbering pool available blocks that are 10% or less contaminated.² As a general principle, AWS supports, and believes it is important to maintain, the Commission’s uniform

¹ Public Notice, *Wireline Competition Bureau Seeks Comment on the Petition of the California Public Utilities Commission and the People of the State of California for Waiver of the Federal Communications Commission’s Contamination Threshold Rule*, DA 02-2822, CC Docket No. 99-200 (Oct. 24, 2002).

² See 47 C.F.R. § 52.20(c).

contamination threshold for all carriers in all states.³ The Commission recognized that “national requirements sufficiently ...ensur[e] that service providers are subject to the same rules and requirements for each state in which they operate.”⁴ In contrast, if states were provided flexibility to increase the threshold depending on circumstances particular to a state or the utilization patterns of a carrier, this could lead to discriminatory results and significant inconsistency.

Moreover, AWS agrees with the Commission determination that, consistent with INC Thousands Block Pooling Guidelines, the 10% contamination threshold is appropriate and “has the potential to add significant numbering resources in areas where thousands-block number pooling has been implemented.”⁵ The 10% contamination threshold is also reasonable because this rule appropriately balances the need for numbers in the pool against the burdens and costs of donating numbers to the pool, which includes costs of intra-service provider (“SP”) ports and network burdens.

However, the Commission may waive its rules if there is good cause.⁶ Good cause exists where there are special circumstances warranting deviation and “particular facts would make strict compliance inconsistent with the public interest.”⁷ While the CPUC has not provided sufficient information demonstrating that special circumstances warrant waiver from the contamination threshold rule for the entire state, AWS believes that good cause may exist to

³ *Matter of Numbering Resource Optimization*, FCC 00-104, CC Docket No. 99-200, First Report and Order and Further Notice of Proposed Rulemaking (rel. Mar. 31, 2000) (“*NRO Order*”) at para. 191.

⁴ *Matter of Numbering Resource Optimization*, FCC 00-429, Second Report and Order and Order on Reconsideration in CC Docket Nos. 96-98 and CC Docket No. 99-200 and Second Further Notice of Proposed Rulemaking in CC Docket No. 99-200 (rel. Dec. 29, 2000) (“*Second NRO Order*”) at para. 46.

⁵ *NRO Order* at para. 191.

⁶ 47 C.F.R. § 1.3.

⁷ *See Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

waive the contamination threshold in the 310 and 909 NPAs, which are in dire need of area code relief,⁸ provided that any such waiver is conditioned on the CPUC's immediate implementation of traditional area code relief in these NPAs.

A. Good Cause Does Not Exist to Grant the Waiver on a Statewide Basis

The Commission has recognized the important public interest benefits of a national pooling framework. In this regard, the Commission stated that "compliance with a national, uniform framework for thousands-block number pooling will permit service providers to avoid having to conform with different requirements for every jurisdiction in which they operate, which would be unwieldy and inefficient for service providers from both a regulatory and a financial perspective."⁹ In addition, as the Commission recognized, "a lack of uniformity would harm consumers, who would likely incur the costs imposed on service providers operating under disparate pooling regimes."¹⁰ For these reasons, the Commission adopted national pooling rules and required states to bring their pooling trials into conformance with these national rules. Pooling under the national rules has just recently begun; the Commission should not abandon much needed uniform and consistent guidelines before it even has an opportunity to determine how effective pooling will be with the current 10% contamination requirement.

The CPUC's proffered reasons for granting its waiver fail to demonstrate "special circumstances" warranting deviation from the national rule, nor do the facts illustrate that compliance with the 10% rule would be inconsistent with the public interest. In fact, the increased burdens and costs on the network and carriers that would result from increasing the

⁸ See Petition of California Public Utilities Commission for Authority to Implement Technology-Specific Overlays, CC Docket No. 99-200 (filed Sept. 27, 2002); AWS comments and reply comments opposing CPUC TSO petition, CC Docket No. 99-200 (filed Nov. 25, 2002 and Dec. 10, 2002).

⁹ *Second NRO Order* at para. 46.

contamination threshold to 25% statewide demonstrate that a broad waiver would clearly *not* be in the public interest.

The CPUC principally cites the “uniqueness of California’s numbering situation” as justification for why there should be a waiver of the contamination threshold rule in California.¹¹ Specifically, the CPUC contends that: (i) California is experiencing a “severe shortage of available numbers to meet growing customer needs;” (ii) the 10% threshold is “unnecessarily low for California and does not serve the public interest;” and (iii) the 25% contamination threshold “works towards California’s goal of more closely aligning the quantity of numbers retained by carriers with the carrier’s actual needs.”¹² However, the CPUC provides no supporting data for these contentions, nor do these contentions describe a numbering situation that is particularly “unique” vis a vis the other states.

First, the CPUC presents no evidence that it is experiencing a severe shortage of numbers. Although the CPUC attaches charts to its petition reflecting the amount of additional numbers that the increase in contamination threshold would *potentially* make available, this data does not demonstrate convincingly that California has a severe numbering shortage. For example, the CPUC has not provided information about the amount of available numbering resources (either whole codes/NXXs or thousands-blocks) it has. Nor has the CPUC provided any data about its relevant donation or contamination rates vis a vis other states. Moreover, there is no evidence that the 10% threshold is unnecessarily low for California or that it would be inconsistent with the public interest to require compliance with this threshold. In fact, given wireless carriers’ participation in pooling, numbering resources are being allocated more

¹⁰ *Id.*

¹¹ CPUC petition at 2.

efficiently and NANPA has extended the projected exhaust dates of several NPAs in California.¹³ In addition, there is no reason why California over other states requires the 25% contamination threshold for number resource management. Although the CPUC expresses general concern regarding whether carriers are properly returning contaminated blocks that they do not need to the pools, this concern would be applicable to all states, and again fails to demonstrate special circumstances in California warranting a higher contamination threshold.¹⁴

Waiving the 10% contamination rule in all California NPAs conflicts with the public interest by unnecessarily imposing significant impact and burdens on carriers and on the reliability of the network. The Commission expressed concern in its *Second NRO Order* as to whether “existing LNP capacity can support pooling if blocks are more than 10 percent contaminated, and the industry has little incentive, other than regulatory mandate, to increase LNP capacity for pooling purposes.”¹⁵ Although the CPUC contends that the recently implemented NPAC Release 3.1 software allows porting of greater volumes of numbers than previously permissible, AWS believes that there will be considerable costs and impacts on the network and carriers with a statewide increase in the contamination threshold.

The released NANC IMG Report studying the CPUC petition for waiver concluded similarly that an increase in the contamination threshold will increase burdens on the network

¹² See CPUC petition at 2-3.

¹³ See, e.g., NANPA 2002 NRUF and NPA Exhaust Analysis (June 2002) (extending by 4-5 quarters the projected exhaust dates of the 323, 408, and 415 NPAs).

¹⁴ The CPUC contends that it does not believe that carriers “will obtain only the quantity of resources actually needed, and return any they do not utilize.” CPUC petition at 5. However, existing rules address this issue, by requiring carriers to forecast their need for numbers and return those they do not assign within 6 months. Moreover, there is no reason that an increase of the contamination threshold would change carriers’ behavior in this regard, and this problem would be better addressed by enforcement activity than an increase in the contamination threshold.

¹⁵ *Second NRO Order*, at para. 164.

and carriers and that “[a]dditional storage capacity is required for the contaminated numbers ported back to the donor carrier.”¹⁶ The 7,000 blocks that would be donated to the pools if the CPUC waiver were granted in whole is “estimated to add an additional 1.05 million ported numbers stored in SCPs.”¹⁷ The NANC IMG Report also recognizes that carriers’ costs will rise as a result of the increased porting.¹⁸

Finally, an increased contamination threshold for the whole state would impose considerable administrative and transaction costs. Because carriers did not anticipate the 25% contamination levels in submitting their requests for thousands-blocks in California, an increase in the contamination threshold across all California NPAs likely would require carriers to revise their exhaust forecasts.¹⁹ It would also increase the number of blocks that the Pooling Administrator would have to allocate and administer.

B. Good Cause May Exist to Waive the Contamination Threshold for the 310 and 909 NPAs, Provided that the Waiver is Conditioned on Immediate Area Code Relief

Although AWS strongly supports uniform and national standards regarding number pooling, it believes there may be good cause for a limited waiver for the 310 and 909 NPAs in California. Good cause is demonstrated in these NPAs because of the special exigency of the exhaust situation in the 310 and 909 NPAs, which cannot be alleviated by any other measure in time to prevent imminent exhaust. To the extent that the waiver would result in an increase in

¹⁶ The NANC IMG Report noted that this additional storage capacity will require carriers to add additional capacity to their respective number pooling/number portability databases. *Report on the Technical Viability of Increasing the Pooling Contamination Threshold*, issued by NANC Issue Management Group (IMG) (Dec. 6, 2002) (“NANC IMG Report”) at 9-11.

¹⁷ NANC IMG Report at 9.

¹⁸ NANC IMG Report at 11.

¹⁹ Specifically, while carriers submitted forecasts for thousands-blocks under the 10% contamination rule, under the CPUC’s proposed increase, carriers may have to re-forecast their need for blocks from the

available numbering resources in these NPAs, AWS would support the waiver of the contamination threshold rule in these two NPAs.

According to recent forecasts, which take into consideration wireless participation in pooling, the 310 and 909 NPAs will exhaust in *less than six months* by Second Quarter 2003.²⁰ These NPAs are thus unquestionably in dire need of additional numbers in the pool. By waiving the 10% contamination rule and increasing it to 25%, the CPUC projects additions of 250 and 302 thousands blocks for the 310 and 909 NPAs.²¹ Provided that the CPUC's projections are accurate, waiver of the contamination rule would not only increase numbers in the fast-dwindling 310 and 909 pools, but may also extend the lives of these NPAs.²² This waiver is also critical because no other available relief can be implemented in time to alleviate the exhaust in these NPAs. Even if the CPUC immediately began to implement area code relief (which as is explained below is unlikely), there is no way that the CPUC could implement any type of area code relief in time to prevent exhaust. For example, by the most optimistic standards, it would take at least seven months to implement an all-services overlay, and it would take at least 12 months to implement a geographic split.²³ Moreover, it does not appear, for a number of reasons, that the CPUC is prepared to implement area code relief immediately. For example, the

pool in order to accommodate the fact that they may receive only 750 numbers in a given block.

²⁰ NANPA 2002 NRUF and NPA Exhaust Analysis (June 5, 2002) and NANPA 2002 NPA Exhaust Analysis, Changes as of October 31, 2002.

²¹ CPUC petition at 4-5.

²² There is some question about the accuracy of the CPUC's projections, given that the CPUC did not seem to account for carriers' existing inventory needs. There is also some question as to the length of time that the NPAs' lives would be extended and the value of the increase in contamination threshold. See also NANC IMG Report Conclusion A.

²³ The CPUC has petitioned the Commission for authority to implement a TSO. AWS has opposed the CPUC petition; however, even if the CPUC were given authority to implement a TSO, it similarly would take a number of months to implement in addition to the months it would take to secure Commission approval for such a TSO.

CPUC has yet to adopt a back-up plan for the 909 NPA. For these reasons, and to the extent that the increase in contamination threshold would increase the amount of available numbers, AWS believes that an increase in the contamination threshold for the 310 and 909 pools would be appropriate and justified.

The Commission should not, however, simply grant this waiver without requiring immediate traditional area code relief in the form of an all-services overlay or geographic split in the 310 and 909 NPAs. As is explained above, the 310 and 909 NPAs are in dire straits. AWS is concerned that if a waiver is granted, the CPUC may further delay implementation of critically needed area code relief. Further, state commissions should not assume that they may rely on waivers in order to prevent impending area code exhaust, especially where they could have foreseen and implemented relief earlier.

II. CONCLUSION

For the foregoing reasons and provided that it will make additional numbering resources available, AWS supports a limited waiver of the CPUC petition from the 10% contamination rule, and increasing it to 25% for the 310 and 909 NPA pools, on the condition that the CPUC implement traditional area code immediately in these NPAs.

Respectfully submitted,

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